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Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

October Term, 2007

PETER PAUL MITRANO,

Petitioner,

versus

SUPREME COURT OF THE STATE OF NEW HAMPSHIRE,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New Hampshire

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SUPPLEMENTAL APPENDIX

Peter Paul Mitrano
Pro se
4912 Oakcrest Drive
Fairfax, Virginia 22030

Petitioner

December 2007

The State of New Hampshire

Supreme Court

Docket No. LD-2007-0002

In the Matter of Peter Paul Mitrano
Referee's Findings and Recommendations

On February 26, 2007, the Attorney Discipline Office (ADO) of the Supreme Court Committee on Professional Conduct filed a petition to impose an immediate interim suspension of the respondent, Peter Paul Mitrano, from the practice of law in New Hampshire. See Sup. Ct. R. 37(16)(f). In the petition, the ADO alleged that an interim suspension was necessary for the protection of the public and to preserve the integrity of the legal profession.

By order dated February 28, 2007, the Court ordered that the petition be served upon the respondent and that he show cause, on or before March 12, 2007, why he should not be suspended immediately from the practice of law in New Hampshire pending the final resolution of disciplinary proceedings by the District of Columbia Court of Appeals.

On March 12, 2007, the respondent responded to the show cause order and asked for additional time to submit a further response. The Court granted this request and ordered the respondent to file any further response to the show cause order by April 18, 2007. No further response was filed.

On March 19, 2007, the Court appointed the undersigned as referee for a hearing to determine whether, in accordance with Supreme Court Rule

37(16)(f), the respondent should be suspended on an interim basis pending the final resolution of disciplinary proceedings by the District of Columbia Court of Appeals.

The referee held a hearing on May 16, 2007, at which the respondent appeared pro se and the ADO appeared through its disciplinary counsel, Landya B. McCafferty. A record was made of the proceedings. All exhibits offered were accepted.

Before addressing the merits of the ADO's petition, the referee addresses the respondent's motion to dismiss it as untimely under Supreme Court Rule 37-A(I)(i). Supreme Court Rule 37-A(I)(i) sets forth the period of limitation for formal proceedings. Under this rule, formal proceedings shall not be commenced unless a grievance or complaint has been brought within six years after the commission of the alleged misconduct when the alleged misconduct occurred before April 1, 2000. Sup. Ct. R. 37-A(I)(i)(1). The respondent contends that because the misconduct at issue in the District of Columbia proceedings occurred more than six years ago, the ADO's petition for an interim suspension is untimely.

I believe that the respondent's reliance upon Supreme Court Rule 37-A(I)(i) is misplaced. This rule pertains only to formal proceedings that commence after issuance of a charge by disciplinary counsel. The ADO's petition in this case was not brought pursuant to formal proceedings as that term is used in Supreme Court Rule 37-A. Accordingly, I hereby deny the respondent's motion to dismiss the ADO's petition as untimely.

The referee also addresses the respondent's motion in limine in which he argues that his due process

rights will be violated unless the parties produce live witness testimony, instead of proceeding by offers of proof. Because the respondent's motion cites only to the Federal Constitution, I consider his argument solely under that constitution. See DeBenedetto v. CLD Consulting Eng'rs, 153 N.H. 793, 806 (2006).

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quotation omitted). Due process generally requires considering the following factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

Id. at 335.

"[T]he respondent's interest in his license to practice law is without a doubt an important interest that ought not be interrupted without substantial justification." Reiner's Case, 152 N.H. 163, 166 (2005) (Reiner I) (quotation omitted); FDIC v. Mallen, 486 U.S. 230, 243 (1988). I believe, however, that the procedure in this case provides adequate safeguards against an erroneous deprivation of this interest.

The respondent, unlike the respondent in Reiner I, has been afforded an opportunity to be heard pre-deprivation. While, arguably, the court could have, as it did in Reiner I, suspend the respondent immediately

and afford him a post-deprivation hearing, the court in this case has provided a pre-deprivation hearing. See Reiner I, 152 N.H. at 166-67.

Further, an independent body has already found, by clear and convincing evidence, following a full evidentiary hearing, that the respondent has engaged in professional misconduct involving misappropriation of clients funds and dishonesty. This finding demonstrates that any suspension that may be ordered as a result of the instant proceeding would not be arbitrary or baseless. Mallen, 486 U.S. at 244-45.

Finally, "[t]here is no inexorable requirement that oral testimony must be heard in every . . . proceeding in which it is tendered." Id. at 247-48. Under the circumstances of this case, I believe that the fiscal and administrative burdens involved in hearing live witness testimony outweigh the probative value, if any, of live witness testimony. The only question before the referee is whether the findings in the District of Columbia disciplinary proceedings warrant an interim suspension, not whether those findings are legally and factually correct. See Reiner I, 152 N.H. at 169. The proposed live witness testimony would be, at best, only marginally relevant to this task. Additionally, the referee has accepted as an exhibit the entire transcript of the District of Columbia disciplinary proceedings. The proposed testimony would therefore be cumulative and repetitive. Under these circumstances, I believe that proceeding by offers of proof does not violate the respondent's due process rights. See In re Grand Jury Proceeding, 13 F.3d 459, 461 (1st Cir. 1994). As in Reiner I, the government's interest in protecting the public and preserving the integrity of the legal system militates against prolonging this proceeding so as to

permit live witness testimony. See Reiner I, 152 N.H. at 166.

For all of the above reasons, therefore, I hereby deny the respondent's motion in limine.

The referee now makes the following findings and recommendations:

I. Facts

On February 9, 2007, Hearing Committee Number Nine (Hearing Committee) of the District of Columbia Court of Appeals Board on Professional Responsibility issued a report recommending that the respondent be disbarred from the practice of law in the District of Columbia.

The Hearing Committee found, by clear and convincing evidence, that the respondent violated the following District of Columbia Rules of Professional Misconduct:

(1) Rule 8.4(b), which declares that it is professional misconduct to commit a criminal act that reflects adversely on the lawyer's honestly, trustworthiness, or fitness as a lawyer;

(2) Rule 8.4(c), which provides it is professional misconduct for a lawyer to engage in conduct involving dishonestly, fraud, deceit, or misrepresentation;

(3) Rule 1.15(a), which requires an attorney to hold funds belonging to clients or third parties in a separate account;

(4) Rule 1.15(b), which requires an attorney, upon receiving funds in which a client or third person has an interest, to notify the client or third person and to deliver promptly to the client or third person any funds that the client or third person is entitled to receive;

(5) Rule 1.15(c), which provides that if the lawyer is in possession of property in which interests are claimed by

the lawyer and another person or persons, the lawyer must keep the property separate and if a disputes arises concerning the respective interest, the undisputed portion must be distributed and any disputed portion kept separate until the dispute is resolved;
(6) Rule 1.17(a), which requires an attorney to deposit funds coming into his or her possession that are required to be kept separate into one or more specially designed accounts; and
(7) Rule 1.4(a), which provides that an attorney must keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

The Hearing Committee found that the respondent violated these rules when he "wrongfully took from others with an interest all the proceeds of the [client's] check, which amount to $241,336.59," with the intent "to deprive those others of their right to that property" and when he "refused to disclose to parties with an interest in the check . . . that he had received the check . . . and spent virtually all of the proceeds within two months of receiving them." The Hearing Committee found that there "really was no evidence" that the respondent was entitled to the entire proceeds of the check, or that he retained the amounts in excess of his claim to attorney's fees only temporarily. The bank account into which the respondent deposited the check was his personal account with Fleet National Bank (now Bank of America) in Hanover, New Hampshire.

The Hearing Committee recommended disbarment, explaining that disbarment was proper because the respondent misappropriated funds belonging to another and that he did so intentionally.

Although the respondent has argued at length that the Hearing Committee's report is legally and factually erroneous, I have not reached this issue. The purpose of this proceeding was not to determine whether the Hearing Committee's report was correct, but whether, considering the findings and rulings contained therein, "suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession." Reiner I, 152 N.H. at 169.

II. Necessity of Interim Suspension

The Court has previously addressed imposing the sanction of interim suspension in the context of Supreme Court Rule 37(9)(i), which pertains to attorneys who have been indicted or bound over for a felony. In this context, the Court has ruled that it "may impose an interim suspension . . . when it is deemed necessary for the protection of the public and the preservation of the integrity of the legal profession." Reiner I, 152 N.H. at 168; see also Sup. Ct. R. 37(16)(f) (court may suspend attorneys upon such terms and conditions as it deems necessary to protect public and preserve integrity of legal profession). In the context of a criminal indictment, the Court has ruled that the allegations contained within such an indictment may meet both prongs of this test (protecting the public and preserving the integrity of the legal profession) where the attorney's actions "directly threaten his clients." Reiner's Case, 152 N.H. 594, 598 (2005) (Reiner II). In Reiner II, the Court observed that allegations that an attorney "misused clients' funds" could be sufficient to establish that interim suspension is necessary to protect the public. Id

Based upon my review of the evidence presented at the hearing, I believe that interim suspension is necessary in this case to both preserve the integrity of the legal profession and protect the public. The Hearing Committee has found that the respondent engaged in conduct that poses a serious threat of injury to his present and future clients. Although the respondent has not been charged with a crime, the Hearing Committee found, by clear and convincing evidence, that the respondent misappropriated and stole money from others. Unlike the allegations in Rein II, I believe that the Hearing Committee's findings establish that interim suspension is necessary not only to preserve the integrity of the legal profession, but also to protect the public.

The respondent contends that because he has not been indicted criminally for his conduct and because the District of Columbia Court of Appeals has not yet imposed discipline upon him, the court lacks the authority to suspend him based solely upon the Hearing Committee's report. To the contrary, the Court "has the inherent power to take reasonable and expeditious action in the suspension or removal of members of the bar for the protection of the community." Barnard's Case, 101 N.H. 33, 34 (1957).

The referee therefore recommends that the court grant the prayers for relief A-D and F contained in the ADO's February 26, 2007 petition.

DATE: May 23, 2007

/s/

Hon. George L. Manias, Referee